

**MINUTES  
of the  
FOURTH MEETING  
of the  
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**November 12, 2015  
Room 317, State Capitol  
Santa Fe**

The fourth meeting of the Radioactive and Hazardous Materials Committee (RHMC) was called to order by Representative Cathrynn N. Brown, chair, on Thursday, November 12, 2015, at 10:05 a.m. in Room 317 of the State Capitol.

**Present**

Rep. Cathrynn N. Brown, Chair  
Rep. Eliseo Lee Alcon  
Sen. Ted Barela  
Sen. Carlos R. Cisneros  
Rep. Stephanie Garcia Richard  
Sen. Richard C. Martinez  
Rep. G. Andrés Romero

**Absent**

Sen. Daniel A. Ivey-Soto, Vice Chair  
Sen. Gay G. Kernan  
Sen. Carroll H. Leavell  
Rep. Larry R. Scott  
Rep. James G. Townsend

**Advisory Members**

Rep. David M. Gallegos  
Rep. Rod Montoya  
Sen. John Pinto  
Sen. Nancy Rodriguez  
Rep. Nick L. Salazar  
Rep. Jim R. Trujillo

Sen. William F. Burt  
Sen. Ron Griggs  
Sen. Stuart Ingle  
Sen. William H. Payne  
Sen. Clemente Sanchez

**Staff**

Gordon Meeks, Drafter, Legislative Council Service (LCS)  
Renée Gregorio, LCS

**Minutes Approval**

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file.

**Thursday, November 12**

**Terrero Mine Remediation Orientation**

Dennis McQuillan, senior scientist, Department of Environment (NMED), briefed the RHMC on cleanup at the Terrero Mine and El Molino Mill sites, which are legacy mining and milling sites where acid rock drainage (ARD) occurred, with suspended solids going into the surface water. He spoke of the subsequent "fish kills" downstream and the concentration of metals in the food web. Mr. McQuillan said that the state took over ownership of these sites after the operations ended, that the cleanup efforts have been successful and that the legislature is part of this success because of the appropriations it made to this effort. He described ARD in detail, noting that when oxidation occurs, it then releases sulfuric acid and metals into the water. Mr. McQuillan then described several other causes of ARD.

Mr. McQuillan described the Terrero Mine as the largest volcanogenic sulfide-ore body in the state. It was discovered near the confluence of Willow Creek and the Pecos River in 1881, and subsequently, ore was extracted and crushed at the site, then transferred downstream. He described the results of this process being that waste rock was deposited into Willow Creek and that runoff from the mine contained ARD, which flowed into the wetlands, then emptied into the Pecos River. Usually, beaver wetlands serve to lessen the impact of mine runoff, but during high runoff times, higher levels of metals enter the river, he explained. Although high levels of zinc and aluminum contributed to the killing of fish, Mr. McQuillan clarified that not all kills are associated with mine sites, but they can be attributed to other events, such as fires.

He then reviewed the history of El Molino Mill, which processed a lot of ore and produced zinc, lead, copper, silver and gold. The mine and mill provided 600 jobs in the 1930s, he added. Contamination occurred, however, because mill tailings were deposited directly into the creek and contained high levels of lead. This became a problem when the tailings dams breached, causing heavy metals to enter the watershed, he explained.

Up until the 1970s, mine waste had been used as fill for recreational areas and roads, Mr. McQuillan said. In 1991, there was a severe fish kill, which brought a lot of attention to these sites and precipitated a series of studies on the area. Tourism and its economy were hurt by the findings, and agencies and community stakeholders decided that corrective actions were needed. At that time, Paul Robinson of the Southwest Research and Information Center was instrumental in helping to establish the community position that a "Superfund level of cleanup" was needed, but without the same cost and delay of that process. In 1992, an administrative order of consent (AOC) was signed, after being negotiated by the mining company and the state. The AOC included a cost-sharing agreement, with AMAX Minerals Company, as the successor to the mining company, paying 80% and the state 20%. Mr. McQuillan added that it was written into this agreement that the state would ask the legislature for appropriations. He also said that although the U.S. Forest Service was not a party to the AOC, it put up \$1.2 million to remediate mine waste used as fill in the campgrounds and roads.

Mr. McQuillan reviewed the elements of the statement of work and corrective actions to be taken. He described the work as an example of impressive engineering and science, adding that, although much of the work has been completed, there is still ongoing corrective action needed at the site. Looking back, Mr. McQuillan said, within a decade there was improvement at these sites, the fish kills stopped in the 1990s and, to this day, there are improvements in water and sediment quality as well as no public safety hazards or fish kills. He ended by saying that the sediment and water quality have improved substantially as a result of remediation. Directing the RHMC to issues around the more recent Animas River spill, Mr. McQuillan indicated that the U.S. Environmental Protection Agency (EPA) is proposing cleanup of lead levels to 20,000 parts per million, whereas the NMED recommends 500 parts per million. He opined that the Animas River is in "people's backyards" and that the EPA is not taking this into consideration.

Committee members asked several questions of Mr. McQuillan, and the following points arose:

- natural issues around metals entering the watershed;
- the cost-effective solution of chip-sealing roads where waste had been used as fill;
- the Terrero Mine site's value as a recreational area and ongoing cleanup needed for developing it;
- the NMED's opinion around the EPA's shift of the allowed contaminant levels on the Animas River and legislators' opinions that the EPA is being reckless;
- the cause of the event in 1991, which was a strong snowmelt, not a spill;
- the time line for completion of the improvements in the consent order;
- the NMED's position on the EPA's standard for the Gold King Mine spill and subsequent concerns and actions taken;
- New Mexico's long-term monitoring plan and its comprehensiveness;
- the EPA's statement that crops in the Gold King Mine spill area are safe to eat because irrigation gates were closed;
- involvement of the congressional delegation in facilitating conversations between the EPA and the state;
- attempts by the NMED to sort out what treatment system the EPA has in place and up to what levels the system treats;
- the many "events" in the Animas over time;
- that mine sites are being referred to as "mine features" now; and
- the need for precautionary thinking related to mines and cleanup.

Representative Brown opened up discussion related to the RHMC supporting the drafting of a joint resolution that would communicate with the EPA about the inappropriateness of its developed standard for lead and the RHMC's support of the NMED's standard of 500 parts per million or less. Because the RHMC did not yet have a voting quorum, the chair asked staff to draft a letter.

### **Waste Isolation Pilot Plant/U.S. Department of Energy Settlement Status**

Jeffrey M. Kendall, general counsel, NMED, gave a brief background of the vehicle fire and radiological release that occurred at the Waste Isolation Pilot Plant (WIPP) in February 2014. He pointed out a graphic of the WIPP facility showing locations of the truck fire and the alarm outside of panel 7. Mr. Kendall reviewed compliance actions taken against the U.S. Department of Energy (DOE) at both WIPP and Los Alamos National Laboratory (LANL). At WIPP, the 13 permit violations amounted to \$17.7 million. LANL's 18 permit violations, which included treatment of hazardous waste without a permit, mixing incompatible waste and not properly managing or characterizing waste, amounted to \$36.6 million. He supplied the committee with a copy of the principles of agreement, which were reached in late April 2015 to resolve the compliance orders. Mr. Kendall gave details of dollar amounts for environmental projects and corrective actions at both facilities and a settlement of \$73 million in lieu of paying fines. In response to a question, Mr. Kendall clarified that of the \$73 million, \$34 million is coming to the state for road improvements in Carlsbad and the remaining amount will be expended by the federal government at both facilities.

Mr. Kendall pointed out that the NMED must be satisfied with the addressing of violations before reopening these facilities, and the NMED has not executed settlement agreements to this point, although these are close to being finalized. He also said that the funds used by the DOE for these supplemental projects will not be diverted from the environmental cleanup budget. He mentioned that the NMED is taking a hard line on timing for the completion of these projects and that anything over two years is unacceptable. He next spoke of the community input and how influential it was in coming to the settlement agreement.

In delineating the path forward for WIPP and LANL, Mr. Kendall asserted that all issues at WIPP and LANL were preventable and that the NMED took unprecedented action and achieved the principles of agreement. The NMED still believes that WIPP is the ideal location and most viable facility for the disposal of transuranic (TRU) and radiological waste and that the community around WIPP fully supports its mission. He added that it is good for the state to be mindful that the disposal of mixed TRU and radiological waste has a razor-thin margin of error. He assured the RHMC that tremendous scientific work is being done at LANL and that what is needed is increased attention to detail.

Mr. Kendall reiterated that the state will move forward in implementing corrective actions, yet another blow might not be sustainable. He highlighted the errors that occurred and said that these facilities must go above and beyond to ensure safety. He spoke of the compliance assistance model, of which one component is a triennial review process, which involves an audit done by an independent third party, that will occur in addition to the NMED's regular oversight. He said that the schedule for reopening the WIPP facility depends on the DOE and the U.S. Congress and that the DOE is accomplishing corrective actions at the facility, but the DOE needs appropriations from Congress to continue the work. Some appropriations have already been made for WIPP's recovery, he added, but the NMED has been meeting with a U.S. House of Representatives subcommittee to ensure future appropriations. He concluded by stating that

WIPP and LANL are a huge part of New Mexico's identity and that resuming WIPP operations is a top priority with the governor.

Committee members engaged in questioning Mr. Kendall, and the following points were discussed:

- compliance orders for analyzing, treating and moving material now stored at the Waste Control Specialists (WCS) facility in Texas;
- timely disposition of the waste stored at WCS and the dependence on WIPP's reopening;
- commending the NMED for its aggressive and professional action;
- what the legislature could do to assist in intervening with the EPA regarding its stated standard for lead contaminant levels on the Animas River and related timing for either a letter or a joint memorial;
- LANL's preparation of corrective action plans in response to the accident investigation board findings;
- the "silo-ing effect" and how to communicate information better among agencies, communities and stakeholders;
- the work that has been completed in Carlsbad before having any signed settlement agreement, which was agreed upon by the state and federal governments as being essential; and
- LANL's timing for making changes and permit modifications, how this might not work in exact accord with the timing of changes at WIPP and that one facility could be reopened while the other remains closed.

The RHMC reached a voting quorum, with Senator Martinez joining the meeting, and on a motion by Senator Cisneros, seconded by Representative Alcon, to which there was no objection, the RHMC endorsed a memorial for the house and senate that would hold the EPA to a standard for lead content in the Animas River to equal to or less than 500 parts per million.

The RHMC, on a motion and a second, adopted the minutes for the September 25 meeting with no objection.

### **Electric Grid Status**

Ron Darnell, senior vice president for public policy, Public Service Company of New Mexico (PNM), and Carlos Lucero, state government affairs manager, PNM, briefed the RHMC on PNM's status as a company and its focus in the state. Mr. Lucero emphasized that PNM is a "true New Mexico" company, in operation since 1917, with a focus on providing reliable, affordable and environmentally conscious utility services. He added that PNM is the only New York Stock Exchange-traded company in the state. Referring committee members to a map of service areas, he indicated that PNM has nearly 15,000 transmission lines and a diverse portfolio that includes coal, nuclear, natural gas, wind, solar and geothermal generation.

Regarding PNM's investment in the state, Mr. Lucero said that PNM is a top taxpayer that provides \$137 million in taxable wages and, in 2014, paid \$22.8 million in property taxes and \$57.7 million in gross receipts taxes. As well, the company purchased \$203 million in goods and services, and it contributes \$3.5 million annually to support communities and nonprofits. Through its Good Neighbor Fund, PNM contributed over \$300,000 to low-income families to help them offset their electric bills.

Mr. Lucero outlined PNM's renewable investments, which include: \$270 million on 15 large-scale solar facilities; a solar program in place for customers that have their own systems, under which \$27 million was paid in renewable energy credits; and a prosperity energy storage project at \$5.3 million that consists of solar and battery, with the help of a DOE grant of \$2.3 million. In completing extensive market research, PNM concludes that its customers expect reliability and affordability and are willing to support rate increases that ensure these attributes.

Mr. Darnell next focused on PNM's portfolio. He said that PNM has done its best to find a solution regarding the San Juan Generating Station that is fair to its customers. He added that PNM does not serve customers in the Farmington or the Four Corners areas. He provided statistics for the San Juan Generating Station that include the number of employees, payroll, property taxes paid and vendor payments. He stressed that the new coal agreement goes into effect once a settlement is approved and that this will provide savings to customers of \$340 million over six years.

Mr. Darnell said that the future of the plant will be based on economics and that the company is under pressure due to low gas prices. A new coal contract will be crucial, he added. Also, he stated, when PNM announced that it was in accord with the EPA and the NMED to retire two units, PNM committed to community enhancements of \$150 million, as well as \$1 million going toward a training program for Navajo students.

The shutdown of these two units will cut emissions, as well as coal and water usage, in half, he said. He also spoke about PNM's ownership in the Palo Verde Nuclear Generating Station, which is 10.2% of those units. He added that PNM will need to replace what it is retiring with base load power and that nuclear power is affordable. He spoke highly of the Palo Verde facility, saying it is a well-performing, safe plant and one of the best operating nuclear facilities in the world. He also said that on-site storage of spent nuclear fuel can expand for the full life of the plant. He mentioned the importance of smart meter use, which allows for two-way communication and has both price and operational benefits.

Committee members engaged in questioning, and the following points arose:

- PNM's ownership of utility-scale solar sites;
- the lowering of solar panel prices, costs for private systems, how these interconnect to the grid and what solar tax credits are available;
- committee members' request for information numbers at PNM for constituent use;

- the San Juan Coal Mine's portion of the workforce, providing about 2,000 jobs in the county;
- the larger economic effect of shutting down two units at the generating station, including the effect on jobs, wages and severance taxes for coal extraction;
- higher integration costs associated with the percentage of renewable energy sources in a system;
- PNM carrying extra capacity, especially with wind and solar energy, to ensure service 24/7;
- the cost of integrating solar into the grid not being included in solar costs at present;
- the crisis situation with global climate change and the need for reduction of coal generating stations;
- the state's economic dependence on oil and gas;
- that the San Juan Generating Station meets federal standards for ozone levels;
- the Navajo Nation's reliance on coal sales; and
- utilities charging owners to connect to the grid.

### **Proposed Legislation**

David Martin, secretary, Energy, Minerals and Natural Resources Department (EMNRD), and Jim Griswold, bureau chief, Environmental Bureau, EMNRD, briefly discussed the status of the brine well property in Carlsbad as background for the proposed piece of legislation before the committee to create the Carlsbad Brine Well Remediation Authority. Secretary Martin spoke of the potential for collapse and resultant damage that would affect highways, rail lines and properties catastrophically. He added that the time line for potential collapse is very hard to predict and could be earlier than what is projected, which is in the next 10 to 25 years. Secretary Martin spoke of the intent of the legislation, which is to form an authority composed of major stakeholders so that the process of reclamation can begin. Mr. Griswold stated that the EMNRD has decided to do the bid as a design-build process. Secretary Martin added that the idea would be to generate a request for proposals by year's end and that, although the bill would set up the authority, it would not identify funding to accomplish the work. He said that the EMNRD has funding for the study. In conclusion, he said that it may take \$20 million for this reclamation project.

Senator Cisneros moved that the RHMC endorse this legislation, and Senator Barela seconded the motion. The committee engaged in discussion, and the following points were made:

- the amount of money spent to date on the brine well project, which is over \$5 million, on monitoring, feasibility studies and a microseismic system;
- that to date, the money has been well spent on gathering data and understanding the problem; and
- the needed structure of the authority to deal with this issue.

The RHMC then voted on the endorsement of this bill, which was adopted with one vote of opposition from Representative Alcon.

**Adjournment**

There being no further business, the committee adjourned at 3:34 p.m.